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<b>T.J., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 19-0053</b>
	)	<b>Issued: April 4, 2019</b>
<b>U.S. POSTAL SERVICE, MOUNT OLIVER</b>	)	
<b>POST OFFICE, Pittsburgh, PA, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 9, 2018 appellant filed a timely appeal from a September 13, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated October 25, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On September 11, 2017 appellant, then a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his mid back when his vehicle was struck from the rear while he was in the performance of duty. He did not stop work.

In support of his claim, appellant submitted a physician work activity report dated September 11, 2017 by Rebecca A. Fillipin, a physician assistant, who diagnosed a sprain of unspecified ligament of the right ankle, headache, and strain of muscle and tendon of unspecified wall of thorax. Ms. Fillipin released appellant to return to work regular duty on September 12, 2017.

In a development letter dated September 20, 2017, OWCP notified appellant of the deficiencies in his claim and requested that he submit additional evidence. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a report dated September 11, 2017, Dr. John Stuart, a Board-certified internist, evaluated appellant for neck pain and stiffness subsequent to a motor vehicle accident. He diagnosed cervical strain, thoracic strain, headache, and right ankle sprain.

On September 13, 2017 Dr. Alexia Zgurzynski, an osteopath, discussed appellant's complaints of back pain and noted that he was currently performing his usual employment duties. She diagnosed resolved cervical strain, thoracic strain, headache, and right ankle sprain.

Dr. Stuart, on September 18, 2017, advised that appellant's headache, right ankle sprain, and thoracic strain had resolved as of that date. By decision dated October 25, 2017, OWCP denied his traumatic injury claim. It accepted that appellant was involved in an employment-related motor vehicle accident on September 11, 2017, as alleged; however, it found that the medical evidence submitted was insufficient to establish causal relationship.

Appellant subsequently resubmitted the September 11 and 18, 2017 reports from Dr. Stuart and the September 13, 2017 report from Dr. Zgurzynski.

On June 18, 2018 appellant requested reconsideration. In a June 12, 2018 statement, he related that he was involved in a "hit [and] run vehicle crash" on September 11, 2017 while driving his work vehicle. Appellant questioned why his medical bills had not been covered and noted that he had provided paperwork regarding the accident to his manager. He submitted September 13, 15, and 18, 2017 reports from a physical therapist. Appellant also submitted x-ray reports of his cervical spine, thoracic spine, and right ankle obtained on September 11, 2017.

By decision dated September 13, 2018, OWCP denied appellant's request for reconsideration as he had not raised substantive legal arguments or submitted new and relevant evidence sufficient to warrant reopening his case for further merit review pursuant to 5 U.S.C. § 8128(a).

## **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.<sup>2</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>3</sup>

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>4</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>5</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, it will deny the request for reconsideration without reopening the case for review on the merits.<sup>6</sup>

## **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

The Board finds that appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. On reconsideration appellant described the circumstances surrounding his motor vehicle accident on September 11, 2017 and noted that he had provided the appropriate paperwork to his manager. The Board finds that his contentions do not require reopening of his case for merit review because, in its October 25, 2017 merit decision, OWCP had found that the medical evidence was insufficient to establish causal relationship. Appellant's submission of his narrative statement fails to constitute a new argument regarding the underlying issue of whether he has established a causal relationship between a diagnosed condition and the accepted September 11, 2017 employment incident.<sup>7</sup> Thus, the Board finds that he has not advanced a relevant legal argument not previously considered by OWCP. Consequently, appellant

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *see also B.W.*, Docket No. 18-1259 (issued January 25, 2019).

<sup>4</sup> *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>5</sup> *Id.* at § 10.608(a); *see also M.S.*, Docket No. 18-1041 (issued October 25, 2018).

<sup>6</sup> *Id.* at § 10.608(b); *A.C.*, Docket No. 17-1616 (issued November 27, 2018).

<sup>7</sup> *T.T.*, Docket No. 18-1682 (issued February 22, 2019).

is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).<sup>8</sup>

The Board further finds that appellant has not provided relevant and pertinent new evidence not previously considered. With his reconsideration request, appellant resubmitted the September 11 and 18, 2017 reports from Dr. Stuart and the September 13, 2017 report from Dr. Zgurzynski. The Board has held, however, that evidence that is duplicative of evidence previously of record does not warrant further merit review.<sup>9</sup>

Appellant further submitted physical therapy reports and x-rays reports of his cervical spine, thoracic spine, and right ankle dated September 2017. The physical therapy and x-ray reports, however, fail to address the underlying issue of causation. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup> Consequently, as appellant did not provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under section 10.606(b)(3).<sup>11</sup>

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>12</sup>

On appeal appellant asserts that his manager advised him that his medical expenses would be paid by the owner of the vehicle who caused the collision. As discussed, however, the evidence he submitted on reconsideration has not met the requirements to reopen his case for a review of the merits of the claim.<sup>13</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>8</sup> *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>9</sup> *See supra* note 7.

<sup>10</sup> *K.F.*, Docket No. 18-1279 (issued February 22, 2019).

<sup>11</sup> *R.L.*, Docket No. 18-0175 (issued September 5, 2018).

<sup>12</sup> *See L.A.*, Docket No. 18-1226 (issue December 28, 2018).

<sup>13</sup> *See J.V.*, Docket No. 18-1534 (issued February 25, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board